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## Bureau of State Audits

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**September 28, 2010**

### **REQUEST FOR PROPOSAL**

#### **Notice to Prospective Proposers for Assessment of the California Department of Transportation, Capital Outlay Support (COS) Program**

September 28, 2010

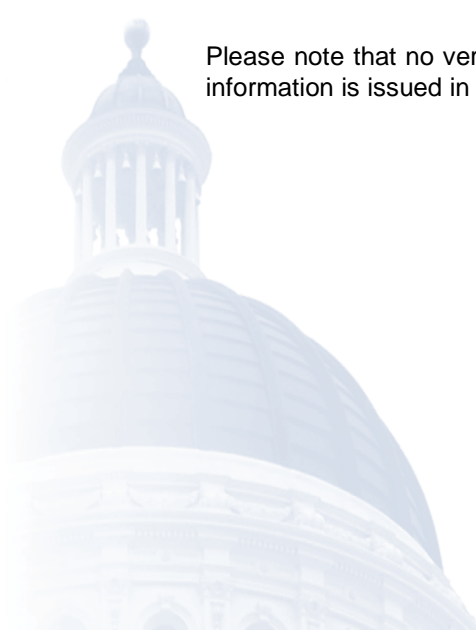
You are invited to review and respond to this Request for Proposal (RFP), titled Assessment of COS Program RFP #10-03.

Prospective contractors interested in responding to this RFP are encouraged to email by **October 6, 2010** the contact person listed below indicating their interest and providing the firm's name and address. Submitting the email will ensure that your firm/team receives supplemental or updated information that might be released subsequent to the State Auditor's formal issuance of the RFP.

In the opinion of the Bureau of State Audits, this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, the contact person for this RFP is:

John Lewis  
Bureau of State Audits  
916-445-0255  
E-mail: [JohnL@bsa.ca.gov](mailto:JohnL@bsa.ca.gov)

Please note that no verbal information given will be binding upon the Bureau of State Audits unless such information is issued in writing as an official addendum.



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\* Required

## **Section I**

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### **KEY DATES**

Listed below are the important dates and times by which the actions must be taken or completed. If the State finds it necessary to change any of these dates, it will be accomplished by addendum.

Action	Time	Date
1. Release of RFP		September 28, 2010
2. Intent to Bid Email Due		October 6, 2010
3. Questions Due		October 6, 2010
<b>4. Proposals Due</b>	<b>9 a.m.</b>	<b>October 14, 2010</b>
5. Opening of Proposals	10 a.m.	October 14, 2010
6. Tentative Award of Contract	5 p. m.	October 20, 2010
7. Contract Award and Execution		October 28, 2010

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## Section II

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### **REQUEST FOR PROPOSAL—Assessment of COS Program**

The State of California, through the Bureau of State Audits (State), requests proposals to be submitted for the following purpose and in accordance with each of the following terms and conditions:

#### **1. PURPOSE**

In this request for proposal (RFP) the State solicits qualified bidders who will be available to assess the Capital Outlay Support (COS) Program of the California Department of Transportation (Caltrans).

#### **2. BACKGROUND AND SCOPE OF WORK**

The State conducts performance audits approved by the Joint Legislative Audit Committee (JLAC). Attachment A is the audit analysis for the JLAC-approved audit of Caltrans' COS program. The analysis contains relevant background about Caltrans and the objectives of the audit. The State asks for proposals from qualified bidders to provide services related to the audit objectives and consistent with the following scope of work:

- **Task No. 1:** Develop criteria, based on experience and industry norms, to evaluate the reasonableness of budgeted and actual expenditures for COS costs, as described in Tasks 2 and 3. Criteria should include, but not be limited to, industry norms for staffing for COS and for directing and managing such projects.
- **Task No. 2:** Assist the State's audit team with evaluating the reasonableness of Caltrans' estimated budgets for COS in total and for a sample of projects, using the criteria described above. The State's audit team will select the sample of 20 projects and collect and analyze relevant information; consultant to advise on reasonableness of Caltrans' estimated budgets.]
- **Task No. 3:** Assist the State's audit team with evaluating the reasonableness of Caltrans' actual COS costs for a sample of projects. Assess whether Caltrans' stated causes for any deviations between projected and actual COS costs are reasonable. [The State's audit team will select the sample of 20 projects separate from the sample in Task 2 and collect and analyze relevant information; consultant to advise on reasonableness of Caltrans' costs.]
- **Task No. 4:** Advise the audit team about relevant industry benchmarks and practices with which to assess Caltrans' management of its COS program. [The State's audit team will collect and analyze relevant information; consultant to advise on relevant industry benchmarks and practices.]

### 3. RESPONSIBILITIES AND DELIVERABLES

*Objective One:* Provide a written assessment of the reasonableness of Caltrans' annual COS budget for fiscal year 2010-11, its COS budgets for a sample of 20 projects selected by the State, and its COS expenditures for a sample of 20 projects selected by the State (See Tasks 1-3 in paragraph 2 of this section).

*Deliverable One:* No later than February 11, 2011, the contractor will provide its written analysis, which should include:

- An executive summary providing an overview of the contractor's analysis.
- A description of the methodology used to arrive at the contractor's conclusions.
- A detailed, written discussion of the contractor's analysis and conclusions, including any relevant tables and other graphics used to demonstrate key points of the analysis.
- Supporting working papers setting forth the evidence used to reach the contractor's conclusions. The Contractor shall ensure that it gathers and provides sufficient, competent, and relevant evidence in support of its deliverables so that an independent person could review the work and reach the same conclusions that the contractor reached. Working papers shall include sufficient cross-references as well as all documents that support the contractor's written report. Prior to commencing fieldwork, Contractor shall meet with the State to agree on the format of these working papers. Working papers become the property of the State after the contractor completes any final revisions required by the State.

*Objective Two:* Advise and assist the State (see Task 4 in paragraph 2 of this section).

*Deliverable Two:* Between October 28, 2010, and June 30, 2011, the contractor will be available either in person, by email, or by conference call (as requested by the State) to advise and assist the audit team with Task 4 of Paragraph 2 of this section and also with, but not limited to, providing updates to the State's executive management, answering agency questions, or conducting legislative briefings after the audit is made public. The State expects that hours associated with this objective will be limited to less than 280 hours.

### 4. WORK PHASES

The consulting services shall be provided in six (6) phases and, according to the scope of services for each Phase, as described in the following:

(a) Phase I — Scoping Refinement Phase:

- (i) The term of Phase I is October 28, 2010 to November 12, 2010, unless Contractor receives the prior written approval of the State to extend that date.

- (ii) During Phase I of the audit, the Contractor shall perform research, conduct interviews with Caltrans, as necessary, and consult with the State, for the purpose of further defining the scope of consulting services that must be performed to meet the objectives stated in the proposal submitted by the Contractor.
- (iii) Contractor shall meet with the State on its premises to discuss the scope of the audit during the week of November 15, 2010. At the State Auditor's discretion, this discussion may be achieved via a telephone conference call. Not later than November 19, 2010, the Contractor shall submit a revised written proposal to the State, that sets forth: (1) a detailed description of the consulting services to be performed during Phase II of the audit, as described in subparagraph (b) of this Paragraph 4; (2) an explanation of any proposed modifications to the scope of work Contractor described in the Proposal; (3) any proposed changes in the personnel assigned to perform each objective, as described in the Proposal; (4) a description of the work product that will be delivered to meet each objective; and (5) a separate cost component for each objective, including the total number of hours required to produce the work product required for the particular objective, and a cost quotation for each class of personnel that will be used to produce the work product.
- (iv) The revised written proposal shall also include the total projected cost, including the total number of hours, of preparing the initial draft report during Phase III, as described in clause (ii) subparagraph (c) of this Paragraph 4.

(b) Phase II — Fieldwork Phase:

- (i) The term of Phase II is November 15, 2010, to January 28, 2011, inclusive, unless Contractor receives the prior written approval of the State to modify those dates.
- (ii) For Phase II, the State will review, modify, as necessary, and approve the revised written proposal submitted pursuant to subparagraph (a) of this Paragraph 4, and the scope of consulting services provided by the Contractor shall be limited to those services described in the approved revised written proposal, unless the Contractor receives the prior written consent of the State to perform additional services. In addition, the Contractor shall receive approval from the State prior to any decision not to perform any services described in the approved revised written proposal that are subsequently determined by the Contractor to be unnecessary. The Contractor shall consult with the State throughout Phase II on any refinements or material modifications to the revised written proposal and receive written approval may become necessary during Phase II.
- (iii) During Phase II of the audit, the Contractor shall assemble workpapers as outlined in Paragraph 3 and shall deliver the workpapers to the State for review no later than February 11, 2011, as described in clause (ii) of subparagraph (c) of this

Paragraph 4. Throughout Phase II, the Contractor shall be available to work on the premises of Caltrans and the State, as deemed necessary by the State.

- (iv) The Contractor shall perform the services described in the approved revised written proposal no later than February 11, 2011 unless the Contractor receives the prior written approval of the State to extend that date.
  - (v) The Contractor, including key Contractor personnel, shall be available to meet with the State on the premises of the State, or via telephone conference call at the discretion of the State Auditor, during the week of January 24, 2011, to discuss the results of Phase II ("status update meetings"), and the additional work that is necessary to complete the audit.
  - (vi) Within two days of the status update meeting described in clause (v) of this subparagraph (b), the Contractor shall submit detailed work plans of any additional fieldwork or analysis, or both, that is necessary to complete the audit. The detailed work plan shall include: (1) the personnel who will be assigned to perform the additional fieldwork or analysis, or both; (2) a description of the work product that will be delivered and why additional work is necessary to meet the relevant objective; (3) the total number of hours required to produce the additional work product required for each additional task, and a cost quotation for each class of personnel that will be used to produce the additional work product; and (4) the dates by which the additional fieldwork or analysis, or both will be completed. Contractor shall perform additional fieldwork or analysis only upon the prior written consent of the State.
- (c) Phase III — Writing Phase:
- (i) The term of Phase III is January 31, 2011 to February 11, 2011, inclusive, unless the Contractor receives the prior written approval of the State to modify those dates.
  - (ii) During Phase III, the Contractor, in consultation with the State, shall prepare an initial draft report setting forth statements of facts, analysis, conclusions, and recommendations, and shall finalize the workpapers assembled during Phase II, as described in Paragraph 3 of this section, that are used to support those statements of facts, analysis, conclusions, and recommendations. The Contractor shall submit the initial draft report and those workpapers to the State no later than February 11, 2011, unless the Contractor receives the prior written approval of the State to extend that date. The workpapers shall meet the requirements set forth in Paragraph 3 of this section.
  - (iii) In addition, during Phase III the Contractor shall perform additional fieldwork, if any, that the State has approved, as described in clause (vi) of subparagraph (b) of this

Paragraph 4. If during Phase III the Contractor identifies any additional fieldwork, or analysis, or both, that the Contractor finds is necessary to the audit, the Contractor shall seek the prior written consent of the State prior to performing that additional work, in the manner described in clause (vi) of subparagraph (b) of this Paragraph 4.

(iv) Throughout Phase III, the Contractor shall be available to work on the premises of Caltrans and the premises of the State, as deemed necessary by the State.

(d) Phase IV — Quality Assurance Phase:

(i) The term of Phase IV is February 14, 2011 to February 28, 2011, inclusive. All deliverables pertaining to additional fieldwork or analysis approved by the State shall be provided no later than February 28, 2011, unless the Contractor receives the prior written approval of the State to extend that date.

(ii) During Phase IV of the audit, the Contractor shall perform any additional fieldwork and analysis that has been approved by the State in accordance with the method described in clause (vi) of subparagraph (b) of this Paragraph 4.

(iii) The Contractor shall also be available to work collaboratively with the State in revising the draft audit report submitted to the State at the completion of Phase III to include the results of any additional approved fieldwork and analysis performed by the Contractor and to make technical changes to the draft report in accordance with the State's writing style. The Contractor shall be available to perform any additional consulting services that the State identifies as necessary, including, but not necessarily limited to, revisions to work products submitted to the State by the Contractor and consulting with State on refining the draft report, and answering questions posed by the State.

(iv) Throughout Phase IV, the Contractor shall be available to work on the premises of Caltrans and the premises of the State, as deemed necessary by the State.

(e) Phase V — Final Review/Publishing Phase:

(i) The State anticipates that the term of Phase V will be from March 7, 2011, to no later than April 29, 2011.

(ii) During Phase V of the audit, the Contractor shall be available to perform any additional consulting services that the State identifies as necessary, including, but not necessarily limited to, revisions to the work products submitted to the State by Contractor, consulting with the State on refining the draft report, answering additional questions raised by the State, and assisting the State in responding to any concerns about audit findings that are raised by Caltrans.



(iii) At the request of the State, Contractor, including key personnel, shall be available to accompany the State at an exit conference with Caltrans, tentatively scheduled for the last week of March, 2011. At its discretion, the State may require that attendance to be either in person or via teleconference.

(f) Phase VI — Public Meeting Phase:

The term of Phase VI is from no later than April 28, 2011 to June 30, 2011, inclusive.

During Phase VI of the audit, the Contractor shall be available, at the request of the State, to assist the State Auditor in preparing for and providing testimony to the California Legislature and to assist the State Auditor in meeting with Members of the California Legislature concerning the results of the audit. The State may require this assistance to be provided in the state capitol in Sacramento or via teleconference, as appropriate.

## **5. TRAVEL**

Caltrans and the State are headquartered in Sacramento, California. Additionally, the audit will focus on a sample of projects from four Caltrans district offices to be selected by the State. Travel must be approved in writing by the State Auditor in advance of the travel and shall be reimbursed according to state travel requirements.

## **Section III**

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### ***Proposal Requirements and Information***

#### **1. TIME SCHEDULE**

All prospective contractors are hereby advised of the following schedule and will be expected to adhere to the required dates and times.

<b>Event</b>	<b>Date</b>
Proposal Posting on State Web site	September 28, 2010
Intent to Bid Email	October 6, 2010
Written Questions Submittal Deadline	October 6, 2010
Final Date for Proposal Submission	October 14, 2010 by 9 a.m.
Opening of Proposals	October 14, 2010 10 a.m.
Evaluation Completed	October 18, 2010
Intent to award notice posted at State's Web site	October 20, 2010 by 5 p.m.
Agreement Award	October 28, 2010
Contract approved and signed	October 28, 2010
Contract work starts	TBD

#### **2. DUE DATE**

TIME IS OF THE ESSENCE. Proposals must be submitted and received not later than **9 A.M. on October 14, 2010**, and shall be delivered via Federal Express or other similar delivery service. Late proposals will not be accepted without exceptional cause and the express written permission of the State.

#### **3. ADDRESS**

Proposals shall be sent in a sealed envelope, clearly marked:  
**"Response to RFP No. 10-03"** and addressed to:

Bureau of State Audits  
Attention: John Lewis  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

#### 4. QUESTIONS

Prospective contractors requiring clarification or further information on the intent or content of this RFP or on procedural matters regarding the competitive bid process may request clarification by submitting questions with a cover page clearly marked "**Questions Relating to RFP No. # 10-03**" via fax to (916) 327-0019 or mail to:

Bureau of State Audits  
Attention: John Lewis  
Questions Relating to RFP No.# 10-03  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

To ensure response, questions must be received in writing by 5 p.m., **October 6, 2010**. Question and answer sets will be provided to all prospective contractors without identifying the submitters.

If disclosing questions regarding a proposal to other prospective contractors would compromise proprietary information, a prospective contractor may seek clarification or further information on the content of the RFP by marking the question packet "CONFIDENTIAL" and submitting questions as described above. The prospective contractor must explain why his/her questions are sensitive in nature. If the State concurs that disclosure of the question or answer would expose the proprietary nature of the proposal, the question will be answered and both the question and answer will be kept in confidence. If the State does not concur with the proprietary aspect of a question, the question will not be answered in this manner and the prospective contractor will be so notified.

#### 5. COPIES

The prospective contractor should submit four (4) legible copies of its proposal. The original proposal must be marked "ORIGINAL COPY." All documents contained in the original proposal package must have original signatures and must be signed by a person who is authorized to legally bind the proposing firm. All additional proposal sets may contain photocopies of the original package.

#### 6. FORMAT OF PROPOSALS

To facilitate the two-stage review of proposals as described in Paragraph 10 of Section III of this RFP, each proposal should be submitted in two separate parts and in sealed envelopes. Part I should contain all responsive materials except those relating to cost. Part II should contain only information relating to costs that will be charged by the contractor.

## **7. MINIMUM CONTENTS OF PROPOSAL**

At the sole discretion of the State, a proposal may be eliminated from consideration if it fails to contain each of the following provisions or to provide a justification satisfactory to the State for its exclusion:

- a. Identification of the prospective contractor, including the name of the firm submitting the proposal, its mailing address, telephone number, e-mail, and contact if further information is desired.

- b. Management:

Identification by name of the lead personnel the contractor proposes to assign to the engagement. Contract terms will not permit substitution of lead personnel without prior written approval of the State.

- c. Personnel:

For each individual that the prospective contractor proposes to assign to the engagement (excluding administrative support), the proposer must provide a summary of similar work or studies performed, a resume, and a statement indicating his/her planned responsibilities and percentage of work to be performed under the contract. Any limiting factors on the availability of these individuals should be identified. Individuals assigned to the engagement must have experience and expertise in evaluating the financial position of a housing agency. The proposal must also specifically note relevant certificates/licenses held by proposed staff and whether proposed staff or the firm has been the object of any disciplinary action by a licensing or regulatory authority during the past three years. Former employees of the State may not work on any State contract project within one year of termination. The State, in its sole discretion, reserves the right to reject any individual proposed to be assigned to the engagement.

- d. Related experience.

Prospective contractors shall provide the State with a listing of engagements similar to the types of analyses described in this RFP. Specifically, the list must include three examples of engagements in which the contractor independently evaluated capital outlay support. The listing should include:

- Title of the project;
- Name of the evaluated entity;
- Brief description of the project; and

- Name and telephone number of the evaluated entity's contracting officer.

By furnishing this information, the prospective contractor gives permission to the State to contact these entities regarding the prospective contractor's past performance.

If the firm is newly organized, a listing of projects completed by lead personnel during previous employment may be acceptable. Moreover, if the contractor is a joint venture, the experience of the joint venturers may be combined.

e. Subcontracts.

The prospective contractor must list any prospective subcontractors it plans to use in performing the work, including a listing of the individuals the subcontractor proposes to assign to the engagement, in accordance with Subparagraph (b) and (c) of this paragraph. Prospective subcontractors must also be listed on the Bidder Declaration, Attachment J to this RFP. The State, in its sole discretion, reserves the right to reject subcontractors proposed by the contractor.

f. Methodology.

The proposal shall include a description of the prospective contractor's overall approach to providing the services described in Section II of this RFP. The proposal must include specific techniques to be used in the types of analyses described in this RFP.

g. Independence/Conflict-of-Interest Disclosure.

- (i) The prospective contractor must disclose and shall have a continuing duty to disclose any financial, business, or other relationship of the contractor, subcontractor, or individual employees that may have an impact on the work to be performed (see Attachment K to this RFP).
- (ii) In this disclosure, the prospective contractor must include information regarding situations that might create an appearance of a lack of independence, regardless of whether the prospective contractor believes that the situation creates an actual conflict of interest, and how the prospective contractor intends to manage such situations. If the contractor believes that there may be an appearance of a conflict of interest or lack of independence based on any previous or ongoing work the contractor has performed or is performing, the contractor shall specifically address how it plans to address and manage that appearance, including, but not limited to, how appropriate fire-walls would be established by the contractor to guard against that appearance.

- (iii) If the contractor believes that no conflict of interest or appearance of lack of independence as described above exists, then a statement to that effect must be made in the contractor's proposal.
- (iv) The State shall have the right to disqualify or terminate a contractor if it believes that the best interests of the State require that the contractor be disqualified or terminated because the contractor has a conflict of interest or because a situation exists that creates the appearance of a lack of independence and also to disqualify any proposed personnel on that basis.
- (v) In accordance with State policy, any contractor selected to provide services to the State may be required to submit a Statement of Economic Interest (Form 700). See subparagraph (a) of paragraph 18 of Attachment C of this RFP.

h. Cost.

The proposal shall include a quotation of charges, including the classes of personnel to be used in the project, the total hourly rate charged for each class, the estimated number of hours that each class of personnel will charge, and any other costs for equipment, software, or supplies. **The proposal should include a separate cost component for objective 1 from the Responsibilities and Deliverables section.** These cost components must project the total number of hours required to produce the deliverables and contain a cost quotation of charges for each class of personnel that would be used to produce the deliverables. **The proposal should include hourly costs for objective 2 from the Responsibilities and Deliverables section.** It is understood that the total number of hours associated with this objective is dependent on specific requests for advice and assistance made by the State. The State does not anticipate needing any more than 150 hours of advice and assistance under objective 2.

The charges must be provided as hourly rates and should be applicable throughout the contract period.

The proposal must detail and include any other charges (such as charges for clerical support, reproduction, and delivery) that would be charged to the State. If the State requires travel, the rates for travel-related expenses shall not exceed the rates established for employees of the State of California.

The State will pay only for hours actually worked at the rates submitted and for actual expenses incurred.

The amount available for the costs of travel, if any, shall be negotiated with the selected contractors in conformity with Subparagraph (c) of paragraph 4 of Attachment C of this RFP.

i. Preference for Small Business

The proposal shall indicate if the firm claims a small business preference and, if applicable, must certify their small business certification using Attachment I. Prospective small business subcontractors must be listed on the Bidder Declaration attached to this RFP (Attachment J) and certifications issued by the Department of General Services, Office of Small Business and DVBE Services must also be submitted with the proposal.

If a firm qualifies for this Small Business Preference, the State will reduce the firm's cost estimate by 5 percent when comparing it to the cost estimates included in the other proposals received.

j. Incentive for Disabled Veterans Business Enterprise Participation

The proposal shall indicate if the firm claims Disabled Veterans Business Enterprise participation (DVBE) and if applicable, must certify their DVBE participation using Attachment I. Prospective DVBE subcontractors must be listed on the Bidder Declaration attached to this RFP (Attachment J) and certifications issued by the Department of General Services, Office of Small Business and DVBE Services must also be submitted with the proposal.

If a firm qualifies for the DVBE incentive, the State will reduce the firm's cost estimate when comparing it to the cost estimates included in other proposals received. Attachment H describes the percentage incentive for bidders who provide DVBE participation.

k. Darfur Contracting Act Certification

The proposal shall include an executed Darfur Contracting Act Certification. The Certification is Attachment G to this RFP.

## **8. OTHER CONTENTS OF PROPOSAL**

The prospective contractor may include any relevant information and pertinent exhibits in the proposal. Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this solicitation letter. Emphasis should be on conformance to the instructions and responsiveness to the requirements described herein, and on completeness and clarity of content. Proposals must be complete in all respects and submitted by dates and times shown in Section III,

paragraph 1 of this RFP. A proposal may, in the sole discretion of the State, be rejected if it is conditional, incomplete, or it contains any alterations of form or other irregularities.

## 9. CONFIDENTIALITY

In accordance with the statutes governing the State, the contractors and each of their employees or agents assigned to the contract will be required to execute a confidentiality agreement (Cal. Gov. C. Sec. 8545.3, Attachment D to this RFP).

## 10. REVIEW PROCESS AND CRITERIA

Subject to Paragraphs 7 and 12 of this Section, the State will select the successful contractors on the basis of both merit and cost, with a preference of 5 percent on the cost of its proposal given to qualified small businesses and the applicable percentage cost preference for DVBE participation. An evaluation committee will only be given Part I of each proposal and will score the merit of each proposal using the following criteria:

Criteria for Evaluating Merit of Proposals	Maximum Points
<b>Technical Aspects of Proposal:</b>	
Quality of approach and methodology	20
Clarity and succinctness of proposal	10
<b>Organizational Capabilities:</b>	
Demonstrated ability to successfully perform analyses of the reasonableness of budgets and expenditures related to capital outlay support.	25
Qualifications and experience of management and lead staff to be assigned to the project	30
Related organizational experience	<u>15</u>
<b>TOTAL</b>	<b><u>100</u></b>



Any proposal not receiving a merit score of 75 or more will be eliminated from further consideration. To determine the merit score, the State may apply a statistical averaging method to scores submitted by an evaluation committee.

Part II (Cost Proposal) of the proposal will be evaluated for each contractor scoring 75 or more merit points.

The overall evaluation will be in accordance with the following process:

During this phase, cost proposals will be opened. The cost proposal with the lowest price will be assigned a score of 100 points. Other cost proposals will be assigned points on a proportional basis relative to the cost of the lowest bid (after adjustments are made for any applicable preference programs). For example, if the second lowest bid is 20 percent higher than the lowest cost bid, it will be assigned a point score of 80, which is 20 percent lower than the point score or rate of the lowest cost bid.

Part I – Technical Merit – score will be weighted 65 percent and each cost score will be weighted 35 percent to create a combined overall score of 100 percent.

The firm with the highest combined score at the end of Phase II will be awarded the contract agreement.

If no proposals are received containing bids offering a price, which in the opinion of the State is a reasonable price, the State is not required to award an agreement.

During the evaluation and selection process, the State may request the presence of a prospective contractor's representative for answering specific questions, orally and/or in writing. If discrepancies between sections or other errors are found in a final proposal, the State may reject the proposal; however, the State may, in its sole discretion, retain the proposal and correct any arithmetic or transposition errors in price or quantity. The State will notify all prospective contractors of its decision to award the contract.

## **11. NOTICE OF INTENT TO AWARD**

The State will notify all prospective contractors of its tentative decision to award the contract. Within five days after the notification is mailed by the State, any person or firm that has submitted a proposal can protest the tentative award of the contract to another party by submitting the grounds for the protest to the State. The State will make a final award of the contract if it determines that the grounds for the protest are invalid.

If the State determines that the grounds for the protest are valid, the State will notify all prospective contractors of the tentative change in the award of the contract. The procedure described in the previous paragraph will then again be followed.

## **12. RIGHT TO REJECT ANY OR ALL PROPOSALS**

The policy of the State is to solicit proposals with a bona fide intention to award a contract. The State, in its sole discretion, may reject any and all bids submitted in response to this RFP, without regard to the cost or quality of the proposal, or other considerations upon determination that it is in the best interest of the State to do so.

## **13. MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Any proposal that the State receives before the date set for receipt of proposals may be withdrawn or modified by written request of the prospective contractor. However, to be considered, the modified proposal must be received by the deadline set for receipt of original proposals.

## **14. MODIFICATION OR AMENDMENT OF THIS REQUEST**

This RFP may be modified at any time prior to the time set for receipt of proposals and thereafter as long as no proposal has been opened. Upon any such modification, all prospective contractors will be notified, and any person or firm who has expressly requested such notice in writing will also be notified. However, persons or firms who have been invited to propose, but who have not indicated their interest in writing, may not be notified of such changes at the discretion of the State.

## **15. INCORPORATION OF ATTACHMENTS**

This RFP consists of 67 pages and contains the following attachments, which are hereby incorporated into this proposal by reference:

Attachment A	Analysis of Audit Request
Attachment B	State of California Standard Agreement Form
Attachment C	General Terms and Conditions
Attachment D	Confidentiality/Nondisclosure Agreement
Attachment E	Encryption and Information Privacy Policy
Attachment F	Certification of Special Terms and Conditions
Attachment G	Darfur Contracting Act Certification
Attachment H	Small Business and Disabled Veteran Business Enterprise Incentive
Attachment I	Proposal/Proposer Certification Sheet
Attachment J	Bidder Declaration
Attachment K	Independence Questionnaire/Conflicts of Interest Disclosure
Attachment L	Security Agreement
Attachment M	Attachment Checklist

## **16. ACCEPTANCE**

Proposals to this request by prospective contractors constitute an express acceptance of all provisions of this RFP, including all attachments, exhibits, and schedules: however, the State, in its sole discretion, may negotiate with the contractor on specific provisions of the final agreement.

## **17. PUBLIC DISCLOSURE OF PROPOSAL**

All proposals will become property of the State of California and will, along with the summaries of evaluations, be available to the public for review after the contract is awarded. Proprietary information in the proposals will remain confidential as permitted by law. To prevent its release to the public, the proposer must indicate what information in the proposal is proprietary, with citation to the relevant provisions of law exempting or precluding that information from public disclosure.

## **ATTACHMENTS (A-M)**

## **Attachment A**

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### **ANALYSIS OF AUDIT REQUEST 2010-122 August 4, 2010**

#### **I. AUDIT REQUEST**

Senator Simitian and Assemblymember Buchanan, as chairs of the budget subcommittees on Transportation, are requesting an audit of the Department of Transportation's (Caltrans) Capital Outlay Support (COS) program. Specifically, the members request that the audit examine the performance, management, efficiency, and budget of the COS program.

#### **II. BACKGROUND**

Caltrans' mission is to improve mobility across California. Caltrans manages more than 50,000 miles of California's highway and freeway lanes, provides inter-city rail services, permits more than 400 public-use airports and special-use hospital heliports, and works with local agencies to fulfill its mission. In the Governor's 2010-11 proposed budget, Caltrans's budget is approximately \$14 billion.

Caltrans carries out its mission through six primary programs, including the Highway Transportation program. Within its Highway Transportation program, the COS program is Caltrans' largest in terms of staffing. The Governor's 2010-11 budget proposes about \$2 billion for COS to provide support to develop, manage, and deliver roughly \$10 billion in highway capital projects. Support activities can include completing environmental reviews, designing and engineering projects, acquiring right-of-ways, and managing and overseeing construction. Approximately \$1.5 billion of COS's \$2 billion proposed budget is for more than 10,000 Caltrans' staff to perform project work. The remaining \$500 million is split almost evenly between contract resources and Caltrans' administrative overhead for the program. Caltrans' staff, together with contracted resources, work on various phases of a couple of thousand projects in any given year so that they will be ready for construction by the scheduled time.

In its March 2010 analysis of the Governor's proposed 2010-11 Transportation budget, the Legislative Analyst's Office (LAO) reported that in light of the insufficient information Caltrans provided regarding the basis for workload and staffing for the COS program, the LAO evaluated the level of funding and staffing provided for the program. LAO reported that its evidence shows that the COS program is overstaffed and lacks strong management. Specifically, the report concluded, in part, that Caltrans appears to be incurring significantly higher costs for COS activities than similar agencies; COS staffing in at least some regions is excessive and there appears to be little relationship between the number of positions in a region and the size of its capital program; and Caltrans lacks systems and processes to manage and control COS costs.

Senator Simitian and Assemblymember Buchanan are requesting the audit, citing concerns with Caltrans' inability to provide adequate substantiation for the amount of funding requested for the program and the appearance of having few, if any, cost control and accountability measures in place for the program.

### **III. AUDIT SCOPE AND OBJECTIVES**

The audit by the Bureau of State Audits (bureau) will provide independently developed and verified information related to the Caltrans' COS program and would include, but not be limited to, the following:

1. Review and evaluate the laws, rules, and regulations significant to the audit objectives.
2. Review and evaluate Caltrans' organizational structure as it relates to the planning, development, management, delivery, and oversight of capital outlay projects to determine the following:
  - a. The impact the organizational structure has on the exchange of information between various divisions of the COS program.
  - b. The extent to which the organizational structure allows for a cohesive and comprehensive review of project delivery from a project's initial budget through completion of work.
  - c. Whether the responsibility for the management and completion of key tasks is placed at the appropriate level within Caltrans.
  - d. The extent to which program-level responsibilities are diffused or fragmented.

3. Review and evaluate Caltrans' process for determining its annual COS budget to assess how the budgets for the program of projects and individual projects fit into the COS budget request. More specifically, determine if the resources requested in the fiscal year 2010-11 budget are supported by the capital outlay projects and all projects are included in the appropriate program of projects.
4. Review Caltrans' plans or processes for staffing and overseeing the COS program at headquarters and at a sample of districts to determine the relationship between staffing levels and the capital programs in those districts.
5. Determine whether Caltrans utilizes best practices to manage its COS program and projects at its headquarters and at the sample of district offices. This determination should include, but not be limited to, Caltrans' use of project schedules, project support budgets, technology, software, and regular evaluations of budgeted and actual project expenditures.
6. At a sample of district offices, perform the following steps on a sample of projects that support Caltrans fiscal year 2010-11 budget:
  - a. Identify the extent to which there are cost overruns on the COS projects selected for review. To the extent possible, determine the cause of any support cost overruns to include a specific evaluation of the accuracy of the initial estimates for support budgets and whether any projects not initially included or approved for the budget were subsequently charged to it.
  - b. Review and evaluate Caltrans' time charging policies and practices on COS projects to determine whether staff accurately charge time to the projects.
  - c. Determine whether the amounts planned for expenditure, and the amounts actually spent, on each phase of the support work are reasonable.
  - d. Compare Caltrans' planned and actual staffing levels and costs to industry workload standards and norms, or to an independent consultant's estimate of staffing levels and costs.
  - e. Determine whether a framework or process for evaluating the validity and efficiency of staffing requests for COS-type projects exists (e.g., one that provides a standard number of hours to perform various types of COS activities).
7. Review and assess any other issues that are significant to the COS program.

#### **IV. OTHER WORK IN THE GENERAL AREA**

**2007-106** *Grade Separation Program: An Unchanged Budget and Project Allocation Levels Established More Than 30 Years Ago May Discourage Local Agencies From Taking Advantage of the Program* (September 2007)

**2004-140** *Department of Transportation: Various Factors Increased Its Cost Estimates for Toll Bridge Retrofits, and Its Program Management Needs Improving* (December 2004)

**2004-010** *Department of Transportation: Its Seismic Retrofit Expenditures Comply With the Bond Act and Its Reimbursement of Interim Funding for Fiscal Years 1994-95 and 1995-96 Is Nearly Complete* (December 2004)


**2002-126** *California Department of Transportation: Low Cash Balances Threaten the Department's Ability to Promptly Deliver Planned Transportation Projects* (July 2003)

#### **V. RESOURCE REQUIREMENTS**

We estimate that this audit would require approximately 4,584 hours of audit work at a cost of approximately \$458,400 plus travel and administrative expenses and the possible costs related to an outside consultant, if necessary. We will conduct this audit using our existing budget authority to the extent funding is available for audits approved by the Joint Legislative Audit Committee.

#### **VI. REQUIRED DATE OF COMPLETION**

The budget subcommittees on Transportation in the Senate and Assembly requested that the bureau report results to the Legislature no later than May 1, 2011.



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**ELAINE M. HOWLE, CPA**  
State Auditor

## ***Attachment B***



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## **Attachment C**

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### **General Terms and Conditions**

1. **PURPOSE**\_\_\_\_\_ (See Section II of this RFP).
2. **TERM**\_\_\_\_\_ (See Section II of this RFP).
3. **DESCRIPTION OF SERVICES**\_\_\_\_\_ (See Section II of this RFP).
4. **AMOUNT PAYABLE**

The total amount payable under this Agreement may not exceed \_\_\_\_\_ and is payable as follows:

- (a) The State shall pay the Contractor for each hour of services actually performed under this Agreement in accordance with the hourly rate schedule attached hereto as \_\_\_\_\_.
- (b) The State agrees to reimburse the Contractor for services performed by the Contractor, upon the prior written approval of the State in locations other than the premises of the State in Sacramento, California. The State shall pay the Contractor for these services in accordance with subdivision (a) of this paragraph.
- (c) In consultation with the Contractor, the State shall make arrangements for any travel required under this Agreement and shall pay the Contractor for travel and living expenses incurred by the Contractor, as documented by the Contractor in the manner prescribed by the State, in providing the services that are the subject of this Agreement at locations other than the Contractor's usual place or places of business. Reimbursement shall be made as follows:
  - (i) Airfare: commercial carrier coach fare rate, supported by a receipt.
  - (ii) Other transportation: actual, reasonable expense, supported by a receipt.
  - (iii) Living expense: actual expenses, not to exceed maximum state employee reimbursement rates for nonrepresented employees, to be claimed and computed in accordance with the Department of Personnel Administration regulations in effect when the expenses are incurred.

- (d) The State shall reimburse Contractor for Contractor's actual out-of-pocket expenses. Contractor shall not charge the State any overhead or cost of advancing funds in connection with these expenses. All reimbursable expenses shall be supported by documentation at the time of billing, unless otherwise agreed to by the State prior to the expenditure. Reimbursable out-of-pocket expenses shall include, but not be limited to:
  - (i) Postage
  - (ii) Messenger and courier service
  - (iii) In-house document reproduction at a rate not to exceed 10 cents per page. The billing statement shall contain a general description of documents copied, purpose, and number of copies made.
  - (iv) Long-distance telephone charges as they appear on the Contractor's bill (i.e., without markup)
  - (v) Outgoing facsimile at a rate not to exceed 25 cents per page, inclusive of long-distance charges
- (e) The consideration to be paid to the Contractor, as provided herein, is in compensation for all of the Contractor's expenses incurred in performance under this Agreement, including travel and living expenses.
- (f) The State may withhold an amount equal to ten percent (10%) of the amount claimed on each invoice submitted by the Contractor. The amounts withheld shall be paid by the State upon successful completion and acceptance of the work project by the State, and a determination by the State that Contractor has complied with Paragraph 9 of these General Terms and Conditions.
- (g) The State, in its sole discretion, may reduce the amount payable for a specific deliverable that the Contractor fails to deliver on the mutually agreed upon date by up to five percent (5%) of the amount payable for that deliverable.
- (h) The State shall make payment to the Contractor, as promptly as fiscal procedures permit, for services performed under this Agreement in accordance with applicable completion criteria and in accordance with the invoices submitted by the Contractor. The State's obligation to pay any amounts due under this Agreement is contingent upon the appropriation and approval of funds for that purpose.
- (i) The Contractor, when billing the State for services under this Agreement, shall itemize the dates and hours, together with a description of the services performed, and shall identify specifically the individual performing those services and his or her title (for example, principal or associate consultant).

- (j) It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the audit services contemplated by the Agreement, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of the Agreement.
- (k) The parties mutually agree that if the State Legislature does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

This contract, so far as it relates to the State, is valid and enforceable only if sufficient funds are made available to the State by the California State Legislature for the purpose of this program. In addition, this contract is subject to any special restrictions, limitations, conditions, any statute enacted by the State Legislature that may affect the provisions, terms or funding of this contract in any manner. The State has a financial obligation under this Agreement or the related Addendum to determine that existing appropriations are available, sufficient in amount to pay for such purchases or such other financial obligations.

Each participant has the option to terminate its participation, or to amend its contract, to reflect any reduction in funds.

## **5. CONTRACTOR PERSONNEL**

- (a) The Contractor, and the agents, employees, and subcontractors of the Contractor, shall act in the performance of this Agreement, in an independent capacity and not as officers, employees, or agents of the State.
- (b) Subject to Subparagraph (a) of this Paragraph 5, the Contractor shall ensure that its employees and agents, whenever performing services on the State's premises, observe all reasonable instructions and directions issued by the State.
- (c) The individuals named in the Agreement as identified by the Contractor and approved by the State, are essential to the services to be performed by the Contractor pursuant to this Agreement. The Contractor shall provide the State with names and resumes of the staff performing the work prior to commencing the work for review and approval. Should any of those individuals no longer be employed by the Contractor, or no longer be assigned by the Contractor to the performance of those services during the term of this Agreement, for whatever reason, the Contractor shall notify the State immediately in writing and the State shall consult promptly on a replacement. If the State indicates in writing to the Contractor that the proposed replacement is not satisfactory, the State may terminate this Agreement immediately by written notice and shall pay the Contractor for all work completed prior to the termination.

- (d) Nothing contained in this Agreement or otherwise shall create any contractual relationship between the State and any subcontractors, and no subcontractor shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

## **6. PROJECT COORDINATOR**

\_\_\_\_\_ is the designated Project Coordinator under this Agreement. The State may change the Project Coordinator at any time by submitting to the Contractor a notice of change signed by the State. \_\_\_\_\_ is the designated Project Coordinator for the Contractor. \_\_\_\_\_, on behalf of the Contractor, shall be responsible for coordinating with the State as required, or necessary for performance of the services provided under this Agreement.

## **7. BUSINESS SERVICES COORDINATOR**

\_\_\_\_\_ is the designated Business Services Coordinator. Any questions regarding travel, reimbursements, billing, or other similar questions should be directed to \_\_\_\_\_ is the designated Business Services Coordinator for the Contractor.

## **8. CONFIDENTIALITY OF INFORMATION**

- (a) The audit reports and records, documents, or information used in support of the reports that are made available to the Contractor, or that are generated by the Contractor, during the course of the audit, including, but not limited to all financial, statistical, proprietary, market sensitive, highly sensitive, personal, technical, and other information used in support of or contained in those reports, are confidential and shall be protected by the Contractor from unauthorized use or disclosure, as described in this agreement. In providing that protection, the Contractor shall comply with this agreement and any other reasonable procedural requirements of the State that are provided in writing to the Contractor.
- (b) Except as required by law or legal process, the Contractor shall not publicly disclose data or disseminate the contents of any draft audit report or any workpapers, records, documents, or information used in support of any draft audit report. Except as required by law or legal process, the Contractor shall not publicly disclose data or disseminate the contents of the final audit report or any records, documents, or other information used in support of the audit report without the written permission of the State. Permission to publicly disclose the contents of an audit report or workpapers on one occasion on behalf of the State or to give testimony at a public hearing held by a legislative committee relating to the audit report shall not authorize the Contractor to further

disclose information in the report or to disseminate this information on any other occasion on behalf of the State.

- (c) With the exception of comments made about the audit to the State or other state agencies, the Contractor shall not make comments to any individual, including, but not limited to, any member of the media regarding the audit or audit workpapers, nor shall the Contractor comment on the State's actions regarding the audit, without the prior written consent of the State.
- (d) The Contractor acknowledges and understands that it is a misdemeanor for the State or any employee or former employee of the State to divulge in any manner not permitted by law, the particulars of any record, document, or information the disclosure of which is restricted by law. This restriction includes, but is not limited to, records, documents, or information reviewed in connection with the audit that are not used in support of the final audit report. This prohibition also applies to any person or business entity and to the employees and former employees of this person or business entity that has assisted the State in the course of an audit or that has been furnished a draft copy of an audit report for comment and review (Government Code Section 8545.1).
- (e) The Contractor has reviewed, understands, and agrees to be bound by the provisions of the Confidentiality Agreement that was signed and submitted by contractor with its proposal and is attached hereto as Rider \_\_\_\_ (attachment D to this RFP) and incorporated herein by reference.
- (f) Contractor agrees that each individual assigned by Contractor to perform services under this Agreement shall sign the Confidentiality/Nondisclosure Acknowledgement form, attached hereto as Rider\_\_\_\_, prior to performing those services under this Agreement.

## **9. RECORD RETENTION**

- (a) Any records obtained by Contractor during the course of the audit from any California public entity pursuant to the authority of the State are the exclusive property of the State and shall be returned to the State; however, the Contractor may retain copies of those records. All communications and workpaper records obtained, originated, or prepared by the Contractor pursuant to this Agreement, including papers, reports, charts, interview notes, and other documentation compiled by the Contractor pursuant to this Agreement, including the Contractor's administrative communications and records relating to this Agreement, shall be delivered to and shall become exclusive property of the State. The Contractor shall provide the State with copies of all such documents.
- (b) During the course of the audit, at the request of the State, the Contractor shall promptly return all originals and copies of originals and copies of originals of writings, including, but not limited to, electronic copies, that were obtained by the Contractor from any California public entity pursuant to the authority of the State in connection with the audit. Not later than 14 days following the completion of consulting services by the Contractor

under this Agreement, the Contractor shall return all such original writings to the State. Notwithstanding the foregoing, the Contractor may retain copies of any such writings for workpaper purposes.

- (c) If Contractor is requested pursuant to subpoena or other legal process to produce its documents relating to this engagement for the State in judicial or administrative proceedings to which Contractor is not a party, the State shall reimburse Contractor at its standard billing rates for its professional time and expenses, including reasonable attorney's fees, incurred in responding to such requests.

## **10. RIGHTS IN DATA**

The ideas, concepts, know-how, or techniques relating to the subject matter of each individual project, developed during the course of this Agreement by the Contractor or jointly by the Contractor and the State can be used by either party in any way it may deem appropriate.

All inventions, discoveries or improvements of the techniques or programs or materials developed pursuant to this Agreement shall be the property of the State. The State agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor or any other such person and further agrees that the Contractor or any other such person may sublicense additional persons on the same royalty-free basis.

This Agreement shall not preclude the Contractor from developing materials outside this agreement, which are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this agreement. Pursuant to this Agreement, all preexisting intellectual property, copyrights, trademarks and products held by the Contractor shall be the sole property of the Contractor.

## **11. STATE PERSONNEL**

The Contractor will not be permitted to use State personnel for performing services that are the responsibility of the Contractor unless that use is previously agreed to in writing by the Project Coordinator, and any appropriate adjustment in price is made. No charge will be made to the Contractor for the services of state employees while performing, coordinating, or monitoring functions.

## **12. DATA PROTECTION PROTOCOLS**

The Contractor agrees to this RFP to the State's data protection protocols, which are attached hereto as Rider\_\_\_\_ (Attachment E to this RFP) and hereby incorporated by reference. The Contractor shall ensure that all assigned personnel are aware of these protocols and they sign and return to the State the attached acknowledgement form attached as Rider \_\_\_\_\_ prior to providing services under this agreement. In addition, the

contractor agrees to adhere to the Security Agreement, which is attached hereto as Rider \_\_\_\_\_ and incorporated herein by reference.

### **13. ASSIGNMENT**

The Contractor may not transfer by assignment, subcontract, or novation the performance of this Agreement or any part thereof except with the prior written approval of the State as to each such assignment, subcontract, or novation.

### **14. AMENDMENT OF AGREEMENT**

This Agreement may be amended by mutual consent of the State and the Contractor. An alteration of or variation from the terms of this Agreement is not valid unless made in writing and signed by the parties of this Agreement.

### **15. NOTICE**

- (a) Notice to either party may be given by certified mail properly addressed. Postage must be fully prepaid to the address beneath the name of each respective party in subparagraphs (c) and (d) of this Paragraph 15. That notice shall be effective when received as indicated by post office records or, if deemed undeliverable by post office, that notice shall be effective nevertheless 15 days after mailing.
- (b) Alternatively, notice may be given by personal delivery by any means whatsoever to the party at the address designated. That notice shall be deemed effective when delivered unless a legal holiday for state offices commences during said 24-hour period, in which case the effective time of the notice shall be postponed 24 hours for each intervening day.

- (c) For the above purposes, the State's address:

Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

- (d) For the above purposes, the Contractor's address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **16. TERMINATION**

- (a) The State may terminate this Agreement if it becomes necessary to end the project prior to its conclusion, upon giving a 3-day advance notice in writing to the Contractor, as

appropriate, in the manner herein specified. In that event, the Contractor agrees to use all reasonable efforts to mitigate any expenses or obligations hereunder.

- (b) In the event of termination, the State shall, subject to the appropriation and the availability of funds for that purpose, pay the Contractor for all satisfactory services rendered prior to notice of termination and for all expenses incurred by the Contractor prior to termination that are not included in charges for service rendered prior to termination and that could not have been avoided by reasonable efforts of the Contractor.
- (c) The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor in accordance with Subparagraph (b) of this Paragraph 16.

## **17. COVENANT AGAINST GRATUITIES**

The Contractor warrants by signing hereon that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or by any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this warranty, the State may terminate this Agreement immediately, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items that the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this Paragraph 17 are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **18. CONFLICT OF INTEREST/INDEPENDENCE DISCLOSURE REQUIREMENTS**

- (a) Pursuant to the Conflict of Interest Code for the State formulated under the Political Reform Act of 1974, California Government Code Sections 81000 et seq., the State includes certain contractors to the State within the list of designated employees required to complete a Statement of Economic Interest (Form 700), unless upon a determination by the State that the range of duties that the consultant is required to perform are limited in scope and, thus, the consultant is not required to comply with the disclosure requirements. The State has made such a determination with regard to the performance of this contract. However, if for any reason the state determines otherwise during the term of this Agreement, the State may require any individual performing services under this Agreement to complete Form 700 and submit it to the State not less than 30 days from the date of this Agreement, or the request of the State, whichever is later.



- (b) This Paragraph 18 shall not be read to express any views or opinions of the State Auditor as to whether any individual providing services under this Agreement is subject to the Political Reform Act of 1974. Any questions about the applicability of that Act to any such individual should be directed to the California Fair Political Practices Commission.
- (c) In all work performed under this contract, the Contractor shall agree to be free both in fact and appearance from personal, external, and organizational impairments to independence, as required by the general standards relating to independence contained in the Government Auditing Standards (GAO 07-731G). In this regard, the Contractor completed and submitted an Independence Questionnaire/Conflicts of Interest Disclosure (Independence Questionnaire) with its proposal which is attached hereto as Rider \_\_\_\_ (Attachment K to this RFP), and hereby incorporated by reference into this Agreement. Each individual assigned to the engagement must complete the Independence Questionnaire attached as Rider \_\_\_\_ (Attachment K to this RFP), as part of the execution of this Agreement. If any individual who is not listed in this Agreement is assigned to perform the services under this Agreement, Contractor shall require that individual to submit the Independence Questionnaire prior to the individual providing any services under this Agreement.

## **19. WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the State to enforce at any time any of the provisions of this Agreement or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Agreement or any part thereof or the right of the State thereafter to enforce each and every such provision.

## **20. DISPUTES**

- (a) Any dispute between the parties arising under or relating to the performance of this Agreement, which is not disposed of by agreement, shall be decided by the State and that decision shall be reduced to writing and mailed or otherwise furnished to the Contractor.
- (b) If the Contractor does not agree with the State's decision, either party may assert its other rights and remedies within this Agreement or within a court of competent jurisdiction.

## **21. LIMITATION OF LIABILITY**

- (a) The State's liability for this Agreement should not exceed the total amount payable under the Agreement.
- (b) In no event will the State be liable for consequential, incidental, indirect, special or punitive damages, even if notification has been given as to the possibility of such damages.

## **22. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY**

The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.

## **23. INDEMNIFICATION**

The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

## **24. LAW GOVERNING**

This Agreement, and any amendments to this Agreement, shall be governed by the laws of the State of California both as to interpretation and performance regardless of the specific location of any performance.

## **25. AGREEMENT IS COMPLETE**

This Agreement represents the complete and exclusive statement of the agreements between the State and the Contractor with respect to the subject matter of this Agreement, and supersedes all prior agreements, proposals, representations, and other communications, written or oral, between the State and the Contractor regarding this subject matter. The State and the Contractor agree that there are no oral or written covenants, conditions, or agreements with respect to the subject matter of this Agreement except as set forth in this Agreement.

## **26. PREVAILING CLAUSES**

In the event of a conflict between the provisions of any Rider or other Attachment to this Agreement and the provisions of the General Terms and Conditions of this Agreement, the provisions of these General Terms and Conditions shall govern.

## **27. CAPTIONS**

The paragraph headings appearing in this Agreement have been inserted for convenience and for ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent to the paragraphs to which they pertain.

## **28. PAYMENTS**

The Contractor will submit invoices at least monthly. The billings will include a separate itemized accounting of all charges, including appropriate original receipts for travel expenses and other administrative expenses. Invoices will be submitted in duplicate and sent to:

Bureau of State Audits  
Attention: Accounting Office  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

## **29. MATERIALS DELIVERY**

All report, materials, and communications, except as provided in Paragraph 28 to this Agreement, are to be delivered to the Project Coordinator:

Bureau of State Audits  
Attention: John Lewis  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

## **30. FORCE MAJEURE**

Except for defaults of subcontractors, the Contractor and the State are not responsible for delays or failures to perform resulting from acts beyond the control of the nonperforming party. Those acts include, but are not limited to, acts of god, strikes, lockouts, riots, acts of war, epidemics, earthquakes, other disasters, governmental statutes or regulations imposed after the fact, and ancillary functions or utilities that are provided by a person or entity not a party to this Agreement. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and the default arises out of causes beyond the control of either the Contractor or the subcontractor, without the fault or negligence of either of them, the Contractor is not liable for damages for that delay or failure, unless the supplies or services

to be furnished by the subcontractor were available from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

### **31. NONDISCRIMINATION**

During the performance of this Agreement, Contractor and its subcontractor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

### **32. TIME OF PERFORMANCE**

Time is of the essence for purposes of this Agreement including the performance of services under any schedule established under this Agreement.

### **33. WITHHOLDING ON PAYMENTS TO CALIFORNIA NONRESIDENTS**

Payments made to California nonresidents, including corporations, limited liability companies, and partnerships that do not have a permanent place of business in this state are subject to seven percent (7%) state income tax withholding (California Revenue and Taxation Code Section 18662).

Types of income subject to withholding include, but are not limited to, payments for services performed in California and payments of leases, rents and royalties for property (real or personal) located in California. No withholding is required on payments for goods.

The Franchise Tax Board may reduce the withholding if the seven percent (7%) will result in substantial overwithholding or waive the withholding if the payee has a current history of filing California returns and/or making estimated payments when due. For more information, or to request a waiver or reduced withholding rate, contact:

Nonresident Withholding Waiver Requests  
Nonresident Withholding Section MS F-265  
Franchise Tax Board

PO Box 651  
Sacramento, CA 95812-0651  
Telephone: (916) 845-4900;

Fax: (916) 845-4831

#### **34. AGENCY LIABILITY**

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **35. INSURANCE REQUIREMENTS**

- (a) Insurance companies must be acceptable to the State. If self-insured, review of financial information may be required. Coverage for both general negligence and professional liability must be in-force for the complete term of contract. If insurance coverage expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this contract. Insurance policies shall contain a provision that states the coverage will not be cancelled without 30 days prior written notice to the State. The Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
- (b) If the Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such even, subject to the provisions of this Contract.
- (c) Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the State.
- (d) The Contractor shall maintain general liability insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined. The policy must include the State of California, its officers, agents, employees and servants as additional insured, but only insofar as the operations under the contract are concerned. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. Contractor shall provide proof of Professional Errors and Omissions Insurance covering any damages caused by an error, omission or any negligent acts.

**36. CERTIFICATION OF SPECIAL TERMS AND CONDITIONS**

- (a) The certification statement was included in the contractor's proposal and is attached hereto as Rider \_\_\_\_\_ (Attachment F to this RFP), and incorporated herein by reference.

NOTE: ADDITIONAL TERMS AND CONDITIONS MAY APPLY DEPENDING ON THE PROPOSAL AND/OR THE PROPOSER.

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## **Attachment D**

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### **Bureau of State Audits, Confidentiality/Nondisclosure Agreement**

The undersigned acknowledges and agrees, on behalf of ("the Contractor") that any records, documents, and information, or any draft or final audit report that the undersigned reviews or produces in connection with providing auditing services to the Bureau of State Audits (State) relating to the Caltrans COS Program shall be subject to the terms of this Confidentiality/Nondisclosure Agreement (agreement). The undersigned acknowledges and agrees to all of the following:

- (a) The audit reports and records, documents, or information used in support of the reports that are made available to the Contractor, or that are generated by the Contractor, during the course of the audit, including, but not limited to all financial, statistical, proprietary, market sensitive, highly sensitive, personal, technical, and other information used in support of or contained in those reports, are confidential and shall be protected by the Contractor from unauthorized use or disclosure, as described in this agreement. In providing that protection, Contractor shall comply with this agreement and any other reasonable procedural requirements of the State that are provided in writing to the Contractor.
- (b) Except as required by law or legal process, the Contractor shall not publicly disclose data or disseminate the contents of any draft audit report or any records, documents, or information used in support of any draft audit report. Except as required by law or legal process, the Contractor shall not publicly disclose data or disseminate the contents of the final audit report or any records, documents, or other information used in support of the audit report without the written permission of the State. Permission to disclose the contents of an audit report on one occasion on behalf of the State or to give testimony at a public hearing held by a legislative committee relating to the audit report shall not authorize the Contractor to further disclose information in the report or to disseminate this information on any other occasion on behalf of the State.
- (c) With the exception of comments made about the audit to the State, the Contractor shall not make comments to any individual, including, but not limited to, any member of the media regarding the audit, nor shall the Contractor comment on the State's actions regarding the audit, without the prior written consent of the State.
- (d) The Contractor acknowledges and understands that it is a misdemeanor for the State or any employee or former employee of the State to divulge in any manner not permitted by law, the particulars of any record, document, or information the disclosure of which is restricted by law. This restriction includes, but is not limited to, records, documents, or information reviewed in connection with the audit that are not used in support of the final audit report. This prohibition also applies to any person or business entity and to the employees and former employees of this person or business entity that has assisted the State in the course of an audit or that has been furnished a draft copy of an audit report for comment and review (Government Code Section 8545.1).

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Company/Firm Name

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Print Name

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Signature

Date

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## ***Attachment E***

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### ***Encryption and Information Privacy Policy***

#### **BACKGROUND**

Theft of portable computing devices, such as laptop computers, is a problem in the state and in private industry. Theft and other loss of portable computing equipment can lead to the compromise of confidential, sensitive, or personal data, which in turn can lead to privacy issues and costly follow-up activities.

The state continues to experience situations in which confidential, sensitive, or personal data is compromised when an unencrypted electronic device is lost or stolen. Budget Letter 05-32 issued by the Department of Finance requires encryption of state data that is confidential, sensitive, and personal when it is stored on portable computing devices (including, but not limited to, laptops and notebook computers) and/or portable electronic storage media (including, but not limited to, optical discs and flash memory storage devices).

Government Code Section 8545.2, grants the Bureau of State Audits a very broad right of access to the records of state agencies and other public entities it is directed to audit. Additionally, the State may receive information from the private sector and agree to keep that information confidential. Since the State has “stand in their shoes authority” over auditee information and at times receives sensitive information from the private sector, the State must be vigilant in protecting personal, sensitive or confidential information from inappropriate or unauthorized access, use or disclosure, regardless of media type. In addition, the State is the owner of sensitive information, such as personnel records, and must also be vigilant in protecting those records.

This policy is not intended to limit the bureau’s right to access the records of public entities. Rather, it is intended to establish protocols to minimize the risk that those records are inadvertently disclosed.

#### **POLICY**



Whether the State is the custodian or the owner of the confidential information, all employees must ensure the security and integrity of that information. Individuals of non-government entities with whom the State has contracted are also included under this mandate (Civil Code Section 1798.19). This policy pertains to all information assets, including, but not limited to electronic assets and paper assets.

All State employees and contractors are responsible for providing encryption, or equally effective measures, for all personal, sensitive, or confidential information that is stored on any portable electronic storage media (including, but not limited to, optical discs and flash memory storage devices) and on portable computing devices (including, but not limited to, laptop, handheld, and notebook computers).

This policy applies to all portable electronic storage media or portable computing devices that contain state data, including media owned by employees, vendors, contractors, or researchers. Where state-owned confidential, sensitive, and/or personal information exists, it must not be allowed on any portable equipment or media that is not protected.

Personal, sensitive, or confidential information stored on shared drives on a local area network (LAN) is not subject to this policy because information stored on these drives is not considered portable. In addition, this policy does not apply to mainframe and server tapes at this time.

## **RULES OF CONDUCT**

The following is an overview of the rules of conduct the State follows to protect that data:

### ***Responsibilities of all staff:***

- All electronic transmittals of personal, sensitive, or confidential information between State staff and auditees or contractors must be encrypted.
- Staff must limit the gathering of data to only what is relevant and necessary, and redact extraneous information whenever possible.
- Staff may work only with secure servers while away from the office.
- Each team leader is responsible for developing and maintaining a written list of staff (including signatures), who are authorized to access any sensitive data on any audit.
- Staff must ensure that all hard drives and other storage devices, including flash drives, are encrypted.

- Staff must follow the bureau's protocols for password protection, which requires 8 plus characters, including numbers and symbols, and new passwords every 42 days. Staff should employ "strong" passwords. A strong password conforms to the following parameters:
  - i. Is never shared with anyone else
  - ii. Is over 8 characters in length
  - iii. Uses at least 1 character from each of the following character types:
    - 1. Lower case letter (e.g. a)
    - 2. Upper case letter (e.g. B)
    - 3. Number (e.g. 3)
    - 4. Punctuation mark or symbol (e.g. \$)
  - iv. Is easy to remember, but not be easily guessable or related to staff (such as SSN's, addresses, or phone numbers)
- Staff assigned to audits that will involve gathering particularly sensitive information, such as HIPPA protected data, must meet with the Information Security Officer and the Information Privacy Officer prior to gathering the data.
- All staff with access to particularly sensitive information, such as HIPPA protected data, must certify in writing, prior to accessing such data, that they are aware of the nature of the data, and have reviewed, understand, and agreed to adhere to the Rules of Conduct as specified in this section. This will occur at the meeting with the Information Security Officer and the Information Privacy Officer.
- Staff must use secure methods to transport data (i.e. carry-on luggage when traveling, or other secure transmittal methods).
- Staff may only use State computer equipment to receive, store, and transmit electronic information.
- Staff must preserve the "chain of custody" over data, whether electronic or hard copy.
- Staff must transfer records gathered from state agencies and stored on laptops to the bureau's network drives as soon as practicable.
- Staff must secure all workpapers and other confidential materials when away from their desks.
- Any breach of security must be promptly reported to the bureau's Information Security Officer and Information Privacy Officer,
- Staff must shred all backup, hard-copy, confidential material when they are no longer needed.
- Staff must ensure that sensitive data on discs be overwritten before being disposed.

- Staff (assisted by the Information Technology Unit) are responsible for ensuring that the reclaimed space on their hard drives is overwritten at the end of the audit.
- Staff (assisted by the Information Technology Unit) are responsible for ensuring that the bureau's electronic information security systems limit access to personal, sensitive, or confidential information to those who need access or those who have a right of access, as appropriate.

## **DEFINITIONS**

For the purposes of this policy:

Personal information is information that identifies or describes an individual as defined in, but not limited by, the statutes listed below. This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request:

- Notice-triggering personal information – specific items or personal information (name plus Social Security Number, driver's license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if an unauthorized person acquires it (See Civil Code Sections 1798.29 and 1798.3);
- Protected Health Information – individually identifiable information created, received, or maintained by such organizations as health care payers, health care providers, health plans, and contractors to these entities, in electronic or physical form. State law requires special precautions to protect such data from unauthorized use, access or disclosure (See Confidentiality of Medical Information Act, Civil Code Section 56 et seq. and the Patients' Access to Health Records Act, Health and Safety Code Sections 123100-123149.5); and
- Electronic Health Information – individually identifiable health information transmitted by electronic media or maintained in electronic media. Federal regulations require state entities that are health plans, health care clearinghouses, or health care providers that conduct electronic transactions ensure the privacy and security of electronic protected health information from unauthorized use, access, or disclosure (See Health Insurance Portability and Accountability Act, 45 C.F.R. parts 160 and 164).

Sensitive information is information maintained by state agencies that requires special precautions to protect it from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive information may be either public or confidential. It is information

that requires a higher than normal assurance of accuracy and completeness. Thus the key factor for sensitive information is that of integrity. Typically, sensitive information includes records of agency financial transactions and regulatory actions.

Confidential information is information maintained by state agencies that is exempt from disclosure under the provisions of the California Public Records Act (Government Code Sections 6250-6265) or other applicable state or federal laws.

\*\*\*\*\*

Contractor shall comply with the Bureau of State Audits' (Bureau) policy on data encryption and information privacy. Please sign the certification below. If you have any questions or concerns regarding this policy, please contact Karl Okamoto, Information Security Officer, or Stephanie Ramirez-Ridgeway, Information Privacy Officer.

---

Date: \_\_\_\_\_

TO: Karl Okamoto, Information Security Officer  
Stephanie Ramirez-Ridgeway, Information Privacy Officer

I certify that I have read and understand my role and responsibilities as outlined in the Bureau of State Audits' Encryption and Information Privacy.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

## **Attachment F**

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### **Certification of Special Terms and Conditions**

1. STATEMENT OF COMPLIANCE: The Contractor's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990 (a-f) and Title 2, California Code of Regulations, Section 8103.
2. DRUG-FREE WORKPLACE CERTIFICATION: By signing this contract, the Contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the Contractor or grantee will comply with the requirements of the Drug-Free Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
  - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code section 8355, subdivision (a)(1).
  - b. Establish a Drug-Free Awareness Program as required by Government Code section 8355, subdivision (a)(2) to inform employees about all of the following:
    - 1) The dangers of drug abuse in the workplace;
    - 2) The person's or organization policy of maintaining a drug-free work workplace;
    - 3) Any available counseling, rehabilitation and employee assistance program; and
    - 4) Penalties that may be imposed upon employees for drug abuse violations.
  - c. Provide, as required by Government Code section 8355, subdivision (a)(3), that every employee who works on the proposed contract:
    - 1) Will receive a copy of the company's drug-free policy statement; and
    - 2) Will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both and the Contractor or grantee may be

ineligible for award or any future state contracts if the State determines that any of the following has occurred: (1) the Contractor or grantee has made false certification or (2) violates the certification by failing to carry out the requirements as noted above.

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: By signing hereon the Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the federal court which orders the Contractor to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with Public Contract Code, Section 10296.
4. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
5. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

#### **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

1. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement (Labor Code, Section 3700).
6. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.)
7. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change, the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
8. CHILD AND FAMILY SUPPORT COMPLIANCE CERTIFICATION: The Contractor acknowledges the policy of the State of California, as set forth in Section 7110 of the California Public Contract Code, to require compliance with state and federal laws relating to child and family support enforcement. By signing this Agreement, the

Contractor certifies that, to the best of the Contractor's knowledge, the Contractor is in full compliance with all earnings assignment orders for child support or family support affecting the Contractor's employees.

9. CORPORATE QUALIFICATION TO DO BUSINESS IN CALIFORNIA:

When agreements are to be performed in the State by corporations, the contracting agencies will verify that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

"Doing Business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will an incorporated contractor performing within the state not be subject to the franchise tax.

Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

10. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board of an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal laws relating to air or water pollution.

11. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

\_\_\_\_\_  
Company/Firm Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*Bureau of State Audits  
Request for Proposal #10-03  
Assessment of COS Program*

## ***Attachment G***

## Darfur Contracting Act Certification

Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476. Therefore, to be eligible to submit a bid or proposal, please insert your company name and Federal ID Number and complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):

<i>Company/Vendor Name (Printed)</i>	<i>Federal ID Number</i>
<i>Printed Name and Title of Person Initialing (for Options 1 or 2)</i>	

1. \_\_\_\_\_  
Initials We do not currently have, and have not had within the previous three years, business activities or other operations outside of the United States.  
**OR**
2. \_\_\_\_\_  
Initials We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.  
**OR**
3. \_\_\_\_\_  
Initials  
+ certification below We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

**CERTIFICATION For # 3.**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County and State of</i>



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**Attachment H**

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**Small Business and Disabled Veteran Business Incentive**

**DVBE INCENTIVE OPTION WITHOUT DVBE PROGRAM REQUIREMENT**

In accordance with section 999.5(a) of the Military and Veterans Code, an incentive will be given to bidders who provide DVBE participation. For evaluation purposes only, the State shall apply an incentive to bids that propose California certified DVBE participation as identified on the Bidder Declaration GSPD-05-105 (Attachment J) and confirmed by the State. The incentive amount for awards based on low price will vary in conjunction with the percentage of DVBE participation. The following percentages will apply for awards based on low price.

<u>Confirmed DVBE Participation of:</u>	<u>DVBE Incentive</u>
5% or Over	5%
4% to 4.99%	Inclusive 4%
3% to 3.99%	Inclusive 3%
2% to 2.99%	Inclusive 2%
1% to 1.99%	Inclusive 1%

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## Attachment I

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### PROPOSAL/PROPOSER CERTIFICATION SHEET

This Proposal/Proposer Certification Sheet must be signed and returned along with all the "required attachments" as an entire package with original signatures. The proposal must be transmitted in a sealed envelope in accordance with RFP instructions.

**An Unsigned Proposal/Proposer Certification Sheet  
May Be Cause For Rejection**

1. Company Name	2. Telephone Number (   )	2a. Fax Number (   )
3. Address		
Indicate your organization type:		
4. <input type="checkbox"/> Sole Proprietorship	5. <input type="checkbox"/> Partnership	6. <input type="checkbox"/> Corporation
Indicate the applicable employee and/or corporation number:		
7. Federal Employee ID No. (FEIN)	8. California Corporation No.	
9. Indicate applicable license and/or certification information:		
10. Proposer's Name (Print)	11. Title	
12. <b>Signature</b>	13. Date	
14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as:		
a. California Small Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter certification number: _____		
b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter your service code below: _____		
<b>NOTE:</b> A copy of your Certification is required to be included if either of the above items is checked "Yes". Date application was submitted to OSBCR, if an application is pending:		

Attachment J

BIDDER DECLARATION

State of California—Department of General Services, Procurement Division  
GSPD-05-105 (EST 8/05)

Solicitation Number \_\_\_\_\_

BIDDER DECLARATION

1. Prime bidder information (Review attached Bidder Declaration Instructions prior to completion of this form):
- a. Identify current California certification(s) (MB, SB, SB/NVSA, DVBE): \_\_\_\_\_ or None \_\_\_\_ (If "None," go to Item #2)
- b. Will subcontractors be used for this contract? Yes \_\_\_\_ No \_\_\_\_ (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.
- c. If you are a California certified DVBE: (1) Are you a broker or agent? Yes \_\_\_\_ No \_\_\_\_  
(2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? Yes \_\_\_\_ No \_\_\_\_ N/A \_\_\_\_

2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. (Attach additional pages if necessary):

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?

CERTIFICATION: By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.

Page \_\_\_\_ of \_\_\_\_

Bureau of State Audits  
Request for Proposal #10-03  
Assessment of COS Program

State of California—Department of General Services, Procurement Division  
GSPD-05-105 (EST 8/05) Instructions

**BIDDER DECLARATION Instructions**

**All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.**

- 1.a.** Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:
- Microbusiness (MB)
  - Small Business (SB)
  - Small Business Nonprofit Veteran Service Agency (SB/NVSA)
  - Disabled Veteran Business Enterprise (DVBE)
- 1.b.** Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No", proceed to Item #1.c. If "Yes", enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.
- Bidders certified as MB, SB, SB/NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999(e)(2)(A) for DVBEs and Government Code Section 14837(d)(4)(A) for small/microbusinesses. For questions regarding commercially useful function determinations made in conjunction with certification approval, contact the Department of General Services, Procurement Division, Office of Small Business and DVBE Certification (OSDC), OSDC Certification and Compliance Unit via email at: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)
- Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.
- Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.
- 1.c.** This item is only to be completed by businesses certified by California as a DVBE.
- (1) Declare whether the prime bidder is a broker or agent by marking either "Yes" or "No". The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
- (2) If bidding rental equipment, mark either "Yes" or "No" to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If **not** bidding rental equipment, mark "N/A" for "not applicable."
- 2.** If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete "Page \_\_\_\_ of \_\_\_\_" on the form.
- If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the "Page \_\_\_\_ of \_\_\_\_" accordingly.

**2. (continued) Column Labels**

**Subcontractor Name, Contact Person, Phone Number & Fax Number**—List each element for all subcontractors.

**Subcontractor Address & Email Address**—Enter the address and if available, an Email address.

**CA Certification (MB, SB, DVBE or None)**—If the subcontractor possesses a current State of California certification(s), verify on the OSDC website ([www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus)) that it is still valid and list all current certifications here. Otherwise, enter "None." [Note: A SB/NVSA should not be participating as a subcontractor]

**Work performed or goods provided for this contract**—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

**Corresponding % of bid price**—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

**Good Standing?**—Provide a response for each subcontractor listed. Enter either "Yes" or "No" to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, and/or DVBE status
- Is **not** listed on the OSDC website as ineligible to transact business with the State

**51% Rental?**—This pertains to the applicability of rental equipment. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

Enter "**N/A**" if the:

- Subcontractor is **NOT** a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
- Subcontractor is **NOT** providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter "**Yes**" if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter "**No**" if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does **NOT** own at least 51% of the rental equipment (quantity and value) it will be providing.

**Read the certification at the bottom of the page and complete the "Page \_\_\_\_ of \_\_\_\_" accordingly.**

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## **Attachment K**

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### **Independence Questionnaire/Conflicts of Interest Disclosure**

Independence Questionnaire for \_\_\_\_\_  
(type or write consultant's name)

Government Auditing Standards (GAO 07-731G) require that auditors be free both in fact and appearance from personal and external impairments to independence. To ensure that the independence standard is met, each consultant must disclose any impairment related to the entities or programs he/she will be auditing, which are listed below.

*Audited*  
*Entities:* \_\_\_\_\_

Do you have any of the following personal impairments:

- A family member who is a director, officer, or employee, and is in a position to exert direct and significant control over of the audited entity or program?
- A financial interest that is direct, or is significant/material, though indirect, in the audited entity?
- A decision-making role that could affect the entity's operations?
- Biases about policies or preconceived notions about the programs?
- Seeking employment with the audited entity?

If you responded yes to any of the above, please describe the impairment.

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Do you have any external impairments that would restrict your work or interfere with your ability to form independent and objective conclusions. External impairments are external pressures, actual or perceived, from management or employees of the audited

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entity that would deter the auditor from acting objectively and exercising professional skepticism?

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If you responded yes, please describe the impairment.

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Signed

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Date

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## **Attachment L**

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### **RIDER —SECURITY AGREEMENT**

#### **Recitals**

- A. Under the terms of the Agreement to which this Rider H is attached, the Contractor, through the Bureau of State Audits (Bureau), will have access to certain records that are subject to the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:") and the California Information Practices Act of 1977 (Secs. 1798-1798.78, Cal. Civ. C.) (the "IPA").
- B. Pursuant to the terms of this Rider, Bureau and the Contractor wish to satisfy certain standards and requirements relating to the application of state security standards to certain information obtained from state agencies that are covered by HIPAA, some of which may constitute Protected Health Information ("PHI") or covered by the IPA (i.e., "personal information" as defined in Sec. 1798.82(e), Cal.Civ.C. and referred to in this Rider as "personal data").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time. PHI covered under this Rider is limited to information that Contractor obtains or creates in the performance of services hereunder for Bureau. "Personal data" covered under an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history, including statements made by, or attributed to, the individual, as defined by the IPA (Sec. 1798.3(a), Cal. Civ. C.) that Contractor obtains or creates in the performance of services hereunder for Bureau.

- D. "Security Incident" means the unauthorized access, use, disclosure, modification, or destruction of PHI, or personal data in electronic or paper format, covered under this Rider.
- E. As set forth in this Rider, the Contractor is the Contractor of Bureau that provides services, arranges, performs or assists in the performance of functions or activities on behalf of Bureau and creates, receives, maintains, transmits, uses or discloses PHI.
- F. Bureau and the Contractor desire to protect the privacy and provide for the security of PHI or personal data created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- G. The purpose of the Rider is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations and the IPA.
- H. The terms used in this Rider, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations or the IPA.

In exchanging information pursuant to this Agreement, the parties agree as follows:

1. Permitted Uses and Disclosures of PHI or Personal Data by Contractor

- A. **Permitted Uses and Disclosures.** Except as otherwise indicated in this Rider, the Contractor may use or disclose PHI or personal data only to perform functions, activities or services specified in this Agreement, for, or on behalf of Bureau, provided that such use or disclosure would not violate the HIPAA regulations, if done by Bureau or the covered entity that has custody of the protected data.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Rider, the Contractor may:
  - 1) **Use and disclose for management and administration.** Use and disclose PHI or personal data for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any



instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use PHI or personal data to provide data aggregation services to Bureau. Data aggregation means the combining of PHI or personal data created or received by the Contractor on behalf of Bureau with PHI or personal data received by the Contractor in its capacity as the Contractor of another covered entity, to permit data analyses that relate to the health care operations of Bureau.
- 3) **Violations of Law.** Use and disclose PHI or personal data if Contractor has a legal obligation to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1); or other applicable law, when Contractor has a legal obligation to do so.

## 2. Responsibilities of Contractor

Contractor agrees, in connection with its services hereunder in the State of California:

- A. **Nondisclosure.** Not to use or disclose PHI or personal data other than as permitted or required by this Rider or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI or personal data, including electronic PHI or personal data, that it creates, receives, maintains, uses or transmits on behalf of Bureau hereunder; and to prevent use or disclosure of PHI or personal data other than as provided for by this Rider. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Contractor will provide Bureau with its current and updated policies. Bureau acknowledges and agrees that those policies are proprietary and therefore exempt from disclosure under the California Public Records Act (Secs. 6254.15; 6254(k), Cal. Gov. C.) and that the public interest would not be served by disclosure of such policies (Sec. 6255, Cal. Gov. C.). If Bureau receives any request for disclosure of those policies from any source in any form, including but not limited to the California Public Records Act, subpoenas, or any other discovery requests, the Bureau will notify Contractor, in a timely manner, so that Contractor may take appropriate action to prevent

disclosure. Bureau agrees not to disclose such policies unless required by court order.

C. **Security.** To take the reasonable steps necessary to ensure the continuous security of all computerized data systems and paper documents containing PHI or personal data. These steps shall include, at a minimum:

- 1) Complying with all of the data system security precautions listed in this Rider or in an Exhibit attached to this Agreement; and
- 2) Compliance by Contractor's engagement team hereunder and the technology tools (hardware, software and related infrastructure) used by Contractor's engagement team hereunder to deliver the services hereunder with Bureau's Memo ADM-06-02 and Budget Letter 05-32, which are attached hereto and hereby incorporated by reference. Notwithstanding the foregoing, Contractor's engagement team hereunder shall use encryption to protect PHI and personal data in its laptops, portable electronic storage media and members of the Contractor's engagement team hereunder shall use encrypted email in any emails sent by them over the Internet which contain PHI or personal data; and
- 3) Not leaving PHI or personal data unattended in vehicles, offices, or other places. In the evening, all offices in which PHI or personal data are present should be locked and laptops, portable devices and paper documents containing PHI or personal data should be locked in file cabinets.

Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with Bureau. Contractor agrees to provide contact information for the Security Officer to Bureau and to notify Bureau in writing of any change to the Security Officer or the Security Officer's contact information.

D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI or personal data by Contractor or its subcontractors in violation of the requirements of this Rider.

E. **Contractor's Agents.** To ensure that any agents, including subcontractors, to whom Contractor provides PHI or personal data received from or created or received by Contractor on behalf of Bureau hereunder, agree, to the same

restrictions and conditions that apply to Contractor with respect to such PHI or personal data, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI or personal data and to incorporate, when applicable, the relevant provisions of this Rider into each subcontract or subaward to such agents or subcontractors.

- F. **Availability of Information to Bureau.** Nothing in this Rider is intended to limit or otherwise modify Bureau's right of access as provided under Chapter 6.5 (commencing with 8543) of Title 2 of the California Government Code.
- G. **Amendment of PHI or personal data.** To make any amendment(s) to PHI that Bureau directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by Bureau.
- H. **Internal Practices.** To make Contractor's internal practices, books and records relating to the use and disclosure of PHI or personal data received from any agency of the State through Bureau, or created or received by Contractor on behalf of Bureau hereunder, available to Bureau or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Secretary, for purposes of determining Bureau's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to Bureau such disclosures of PHI or personal data, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI or personal data, in accordance with 45 CFR 164.528 or make disclosure under the IPA.
- J. **Notification of Breach.** During the term of this Rider, Contractor agrees to do the following with respect to a Security Incident involving PHI or personal data in electronic or paper format (referred to in this section 2(J) as a "breach"):
  - 1) **Discovery of Breach.** In the event of a Security Incident involving PHI or personal data in electronic or paper format, notify Bureau and the affected agency of the State in accordance with, and otherwise comply with the requirements of, Section 1798.82 of the California Civil Code.

Notification shall be provided to, the Privacy Officers of Bureau and of the covered entity and the Information Security Officers of Bureau and of the covered entity. Bureau is responsible for providing Contractor with the

contact information for the covered entity having custody of the information involved in the breach.

If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI or personal data, notification shall be provided by calling the Bureau Privacy Officer. Contractor shall take:

- i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
- ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

2) **Investigation of Breach.** To immediately investigate the breach of PHI or personal data. As soon as practical, but not less than within three (3) business days of the discovery or notification of the breach in the security of the data whose PHI or personal data was or is reasonably believed to have been acquired by an unauthorized person, to notify the Bureau Privacy Officer and the Bureau Information Security Officer of, as well as the Privacy Officer and the Information Officer of the state agency who owns the PHI or personal data (the names of the Privacy Officers and information Officers for each state agency subject to Audit under this Agreement shall be provided by Bureau upon execution of this Rider), of:

- i. What data elements were involved and the extent of the data involved in the breach, as Contractor may reasonably be able to determine within three business days.

As soon as practical, but not less than within seven (7) business days of the confirmation of the existence of the breach, to notify both the Bureau contract manager, the Bureau Privacy Officer and the Bureau Information Security Officer of:

- ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or personal data (if known to Contractor),
- iii. A description of where the PHI or personal data is believed to have been improperly transmitted, sent, or utilized,
- iv. A description of the probable causes of the improper use or disclosure.

3) **Report.** To provide a written report of the investigation to the, the Bureau Privacy Officer and the Bureau Information Security Officer within fifteen

(15) business days of the discovery or notification of the breach in the security of the data whose personal information was or is reasonably believed to have been acquired by an unauthorized person. The report shall include, but not be limited to, the information specified above, as well as a corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

If Bureau discloses all or a portion of this information to a covered entity that has custody of the PHI or personal data, Bureau will clearly indicate, in writing, what information is exempt from disclosure under the California Public Records Act and will request that the covered entity promptly notify Bureau and Contractor as indicated in this subparagraph in the event the covered entity gets a request for that information (including but not limited to California Public Records Act, subpoenas, or any other discovery requests) from any third party, and not disclose such information unless required by court order.

Contractor and Bureau recognize and agree that the significant number of meaningless attempts by third parties to, without authorization, access use, disclose, modify or destroy PHI or personal data will make a real-time notification requirement of these activities formidable for Contractor. Therefore, the Parties agree that this Agreement shall constitute notice to Bureau of unsuccessful attempts to access, use, disclose, modify, or destroy PHI or personal data or interfere with Contractor systems operations in an information system. By way of example, the Parties consider the following to be illustrative of unsuccessful security incidents when they do not result in actual unauthorized access, use, disclosure, modification or destruction of PHI or personal data or interference with an information system: (i) pings on Contractor's firewall, (ii) port scans, (iii) attempts to log on to a system or enter a database with an invalid password or username, (iv) denial-of-service attacks that do not result in a server being taken off-line, and (v) Malware (worms, viruses, etc.).

- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when state or federal law requires contractor to make that notification; or when state or federal law requires Bureau or any agency of the state to make that notification, to pay any costs of such notifications, as well as any reasonable costs associated with the breach. Contractor shall advise Bureau's Privacy Officer as to the time, manner and content of any such notifications that Contractor makes pursuant to this section.

- 5) **Bureau Contact Information.** To direct communications to the below referenced Bureau staff, the Contractor shall initiate contact as indicated herein. Bureau reserves the right to make changes to the contact information below by giving written notice to the Contractor. Those changes shall not require an amendment to this Agreement or Rider.

Bureau Privacy Officer	Bureau Information Security Officer
Stephanie Rameriz-Ridgeway Senior Legal Counsel Bureau of State Audits 555 Capitol Mall, Suite 300 Sacramento, CA 95814 Telephone: (916) 445-0255 stephanier@bsa.ca.gov	Karl Okamoto IT Manager Bureau of State Audits 555 Capitol Mall, Suite 300 Sacramento, CA 95814 Telephone: (916) 445-0255 karlo@bsa.ca.gov

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Rider by Contractor employees with regard to the use or disclosure of PHI or personal data, and to comply with the applicable requirements of Section 1798.19 of the California Civil Code.

3. Obligations of Bureau

Bureau agrees to:

- A. **Notice of Privacy Practices.** Provide Contractor with the Notice of Privacy Practices that the covered entity that has custody of the PHI or personal data produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- B. **Permission by Individuals for Use and Disclosure of PHI or personal data.** Provide the Contractor with any changes in, or revocation of, permission by an Individual to use or disclose PHI or personal data, if such changes affect the Contractor's permitted or required uses and disclosures.

- C. **Notification of Restrictions.** Notify the Contractor of any restriction to the use or disclosure of PHI or personal data that Bureau has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI or personal data.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Contractor to use or disclose PHI or personal data in any manner that would not be permissible under the HIPAA regulations if done by Bureau.

4. Audits, Inspection and Enforcement

In the event of a security incident, Contractor and Bureau shall meet and discuss, in good faith, a mutually agreeable approach to the inspection by Bureau, during normal business hours and with Contractor personnel present, of Contractor's physical practices in the State of California with regard to the safeguarding of any PHI or personal data received by the Contractor from Bureau pursuant to this Agreement. Nothing herein authorizes Bureau to access information of, or relating to, other clients of the Contractor.

In the event Bureau wishes to have any person who is not a Bureau employee participate in such inspection or follow-up thereto, Bureau will notify Contractor in writing of the identity and agency or corporate affiliation of such personnel and shall provide Contractor with a reasonable period of time (but not less than three (3) business days) in which Contractor may object, in writing, to the participation of such personnel and the reasons therefore, including but not limited to, the fact that such personnel are, or are affiliated or employed by, a business competitor of Contractor. Bureau agrees that it will not include personnel objected to by Contractor in any such inspection or follow-up. Bureau also agrees that any non-Bureau employee who participates in the inspection, or follow-up thereto, shall be required to sign a Non-Disclosure Agreement in a form satisfactory to Contractor and to provide a copy of same to Contractor before participating in the inspection, or follow-up thereto.

Contractor shall promptly remedy any material violation of any provision of this Rider and shall, upon request, confirm to the Bureau Privacy Officer that the remedies have been made. Bureau agrees that any paper or electronic records it reflects regarding Contractor's remedies are confidential and exempt from disclosure under the California Public Records Act. If Bureau receives any request for disclosure of this information from any source in any form, including but not limited to the California Public Records Act, Contractor may take appropriate action to prevent disclosure. Bureau agrees not to disclose such policies unless required by court order.

The fact that Bureau inspects, or fails to inspect, or has the right to inspect, Contractor's computers under this subparagraph does not relieve Contractor of its responsibility to comply with this Agreement, nor does Bureau:

- A. Failure to detect or
- B. Detection, but failure to notify Contractor or require Contractor's remediation of any unsatisfactory practices constitutes acceptance of such practice or a waiver of Bureau's enforcement rights under this Agreement and this Rider.

5. Termination

A. **Termination for Cause.** Upon Bureau's knowledge of a material breach of this Rider by Contractor, Bureau shall:

- 1) Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by Bureau;
- 2) Immediately terminate this Agreement if Contractor has breached a material term of this Rider and cure is not possible; or
- 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.

B. **Judicial or Administrative Proceedings.** Contractor will notify Bureau if it is named as a defendant in a criminal proceeding for a violation of HIPAA. Bureau may terminate this Agreement if Contractor is found guilty of a criminal violation of HIPAA. Bureau may terminate this Agreement if a finding or stipulation that the Contractor has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined.

C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all other copies of PHI or personal data received from Bureau hereunder (or created or received by Contractor on behalf of Bureau) that Contractor still maintains in any form, and shall retain no copies of such PHI or personal data or, if return or destruction is not feasible, shall continue to extend the protections of this Rider to such information, and shall limit further use of such PHI or personal data to those purposes that make the return or destruction of such PHI or personal data infeasible. This provision shall apply to PHI or personal data



that is in the possession of subcontractors or agents of Contractor. The Bureau acknowledges that Government Auditing standards may prohibit Contractor to return or destroy PHI or personal data in its workpapers.

**1. Miscellaneous Provisions**

- A. **Disclaimer.** Bureau makes no warranty or representation that compliance by Contractor with this Rider, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of PHI or personal data.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Rider may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI or personal data. Upon Bureau's request, Contractor agrees to promptly enter into negotiations with Bureau concerning an amendment to this Rider embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. Bureau may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Contractor does not promptly enter into negotiations to amend this Rider when requested by Bureau pursuant to this Section or
  - 2) Contractor does not enter into an amendment providing assurances regarding the safeguarding of PHI or personal data that Bureau in its sole discretion deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Contractor agrees to reasonably cooperate with Bureau in the event of litigation or administrative proceedings being commenced against Bureau, its directors, officers, or employees, based on claimed violation of HIPAA, HIPAA regulation or other laws relating to security or privacy, and such claimed violation allegedly involves inaction or action by Contractor, except where

Contractor or its subcontractor, employee, or agent is a named adverse party or where cooperation would impair Contractor's independence.

- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Rider is intended to confer, nor shall anything herein confer, upon any person other than Bureau or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Rider shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Rider shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Rider to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Contractor under Section 6.C of this Rider shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- I. **Effective Date.** This Rider is effective upon the date of execution of the Agreement to which it is appended by authorized representatives of both Bureau and Contractor and shall remain in effect for the duration of said Agreement.

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## ***Attachment M***

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### ***Required Attachment Checklist***

A complete proposal or proposal package will consist of the items identified below.

Complete this checklist to confirm the items in your proposal. Place a check mark or "X" next to each item that you are submitting to the State. For your proposal to be responsive, all required attachments must be returned. This checklist should be returned with your proposal package.

<b><u>Attachment</u></b>	<b><u>Attachment Name/Description</u></b>
_____ Attachment 1	Required Attachment Checklist
_____ Attachment 2	Four Copies of Proposal (in a sealed envelope)
_____ Attachment 3	Four Copies of Cost Proposal (separate from Proposal and in a sealed envelope)
_____ Attachment 4	Independence Questionnaire /Conflicts of Interest Disclosure (see Attachment K)
_____ Attachment 5	Confidentiality Statement/Nondisclosure Agreement (see Attachment D)
_____ Attachment 6	Bidders Declaration (Attachment J)
_____ Attachment 7	Certification of Special Terms and Conditions (Attachment F)
_____ Attachment 8	Proposal/Proposer Certification Sheet (Attachment I)
_____ Attachment 9	Darfur Contracting Certification (Attachment G)
_____ Attachment 10	Encryption and Information Privacy Policy